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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/138,054

08/21/1998

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EXAMINER

VU, NGOC K

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/138,054	<b>Applicant(s)</b> RAMANATHAN, RAMANATHAN	
	<b>Examiner</b> Ngoc K. Vu	<b>Art Unit</b> 2611	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_



Ngoc K. Vu  
Examiner  
Art Unit: 2611

***Continuation of item 5c***

Applicant's arguments filed September 15, 2004 have been considered but are not persuasive.

Firstly, applicant argues "there is no communication or retrieval of configuration information for purposes of selecting one of the two bit rates", and "there is no teaching or even a suggestion in Bray that the auto-negotiation 36 of claim 1 accesses configuration in the physical device 28 to determine a predefined transmission characteristic."

These arguments are not persuasive. Bray of the record discloses that a multiplexer 32 is controlled by an auto-negotiation unit 36 to route the output of the PHY device 28, through the media independent interface, to whichever one of the repeaters 24a, 24b that is data rate compatible with the link partner 22. The operating speed of link partner 22 on the network medium is determined by the auto-negotiation unit 36 that establishes the speed at which to operate PHY device 28. Bray further discloses that the PHY device 28 is configured either for 10 Mb/s data processing, or for 100 Mb/s data processing. Auto-negotiation unit 36 selects the output path of multiplexer 32 and also determines which processing speed, 100 Mb/s or 10 Mb/s, the PHY device 28 implements. See column 3, lines 3-17 and figure 1. The PHY device 28 must contain "configuration information" specifying at least one predetermined transmission characteristic (e.g., 100 Mb/s or 10 Mb/s). The auto-negotiation unit 36 communicates with the link partner 22, the multiplexer 32, and the PHY device 28 to perform the features of determining the processing speed to operate the PHY device 28 corresponding to the speed of operation of the link partner 22 and selecting the output path of the multiplexer 32. That is, the auto-negotiation unit 36 accesses "configuration information" in the PHY device 28 to determine a predefined transmission characteristic (e.g., processing speed at 100 Mb/s or 10 Mb/s) since

the operating speed of link partner 22 is determined by the auto-negotiation unit 36 that establishes the speed at which to operate PHY device 28.

Secondly, applicant argues that the Examiner does not further elaborate how or why either of the cited references provides the necessary alleged suggestion or motivation to modify Bray so that an API interface is located between a data module and a first transmitter module, as specifically set forth in claims 5 and 6. Examiner respectfully disagrees. It is important to note that claim 5 simply calls for “an interface between the data management module and the first transmitter module”, not API interface as applicant specifically points out. With respect to claims 6, 10 and 15, applicant challenges the Examiner to show where such a suggestion or motivation in the prior art exists to modify Bray. It is not necessary that the cited references or prior art actually suggest expressly or in so many words, the changes or improvements that applicant has made. The test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. In re Sheckier, 168 USPQ 716 (CCPA 1971) : In re McLaughlin 170 USPQ 209 (CCPA 1971); In re Young 159 USPQ 725 (CCPA 1968).

Thirdly, applicant argues that Bray fails to teach or suggest instructions to cause a computer to retrieve stored information that identifies at least one transmission characteristic of a transmitter. Examiner respectfully disagrees. Similar interpretation above, Bray of the record teaches that the auto-negotiation unit 36 identifies and selects the predetermined speed 100 Mb/s or 10 Mb/s for transmission by retrieving the stored information (e.g., data rate or processing speed) that identifies at least one transmission characteristic (e.g., 100 Mb/s or 10 Mb/s) of a transmitter (e.g., 46 within PHY device 28). See col. 3, lines 1-32 and figures 1-2. Since the auto-negotiation unit 36 in a transmission system processes automatically, it must be understood that the transmission system embodied in computer program or software in order to automate the transmission system.

Fourthly, applicant argues that Bray fails to teach or suggest the auto-negotiation unit 36 retrieving the stored information from the PHY device 28 on a continual basis. This argument is not persuasive. Claim 46 partly calls for the data management module and the transmitter exchange information on a continuous basis. It must be understood that the exchanging information relating the data rate, e.g., processing speed 100 Mb/s or 10 Mb/s, between the auto-negotiating 36 and the PHY device 28 as long as needed, or as long as the network connection is not failed (see column 3, lines 1-21 and figures 1-2).